

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

MISC. NO. 1:05MC204

FILED
ASHEVILLE, N. C.
JUL - 7-2005
U.S. DISTRICT COURT
W. DIST. OF N. C.

IN RE:)
JOSEPH MARION HEAD, JR.)
)
)

MEMORANDUM OF OPINION
AND
PERMANENT INJUNCTION

THIS MATTER is before the Court on numerous frivolous submissions from Joseph Marion Head, Jr. (Head). For the reasons stated herein, the Court imposes a permanent injunction against future filings by Head within the United States District Court for the Western District of North Carolina.

I. PROCEDURAL HISTORY

In April 1974, Head raped and sodomized a sixteen year girl while threatening to kill her with a machete. *State v. Head*, 24 N.C. App. 564, 211 S.E.2d 534 (1975). Later that year, he shot a man nine times and was subsequently convicted of voluntary manslaughter. *State v. Head*, 28 N.C. App. 189, 220 S.E.2d 641 (1975). Head's conviction for the rape was overturned due to trial court error and he was granted a new trial in 1975. *Head, supra*. His second trial also resulted in a jury verdict of guilty and his conviction and sentence were affirmed on appeal. *State v. Head*, 33 N.C. App. 494, 235 S.E.2d 423 (1977). Since his second conviction, Head has continuously embarked on a course to harass both the state and federal judicial systems. He has filed in excess of 118 actions, motions and pleadings in state court, the most recent being

disposed of by the North Carolina Supreme Court in May 2005. *State v. Head*, ____ S.E.2d ____, 2005 WL 1421935 (2005) (motion for records dismissed).

Nor has Head been reluctant to abuse the federal system. During the past 20 years, he has filed the following:

1. *In re Head*, 770 F.2d 393 (4th Cir. 1985) (affirming district court's dismissal of action as frivolous);
2. *Head v. President of the United States*, 770 F.2d 392 (4th Cir. 1985) (affirming district court's dismissal of action as frivolous);
3. *In re Head*, 1986 WL 17402 (4th Cir. 1986) (affirming district court's dismissal of action as frivolous);
4. *Head v. North Carolina*, 1986 WL 17406 (4th Cir. 1986) (affirming district court's dismissal of action as frivolous);
5. *In re Head*, 810 F.2d 194 (4th Cir. 1987) (affirming district court's dismissal of actions pursuant to 28 U.S.C. § 2254 and 42 U.S.C. § 1983);
6. *In re Head*, 816 F.2d 672 (4th Cir. 1987) (affirming district court's dismissal of § 2254 and § 1983 actions);
7. *In re Head*, 835 F.2d 874 (4th Cir. 1987) (affirming district court's dismissal of action as frivolous);
8. *In re Head*, 838 F.2d 466 (4th Cir. 1988) (affirming district court's dismissal of action as frivolous);
9. *In re Head*, 842 F.2d 1291 (4th Cir. 1988) (affirming district court's dismissal of action as frivolous);

10. *Head v. North Carolina*, 859 F.2d 150 (4th Cir. 1988) (affirming district court's dismissal of action as frivolous);
11. *In re Head*, 861 F.2d 714 (4th Cir. 1988) (dismissing 9 appeals as frivolous);
12. *In re Head*, 865 F.2d 1258 (4th Cir. 1988) (affirming district court's dismissal of action as frivolous);
13. *In re Head*, 887 F.2d 1079 (4th Cir. 1989) (affirming the district court's dismissal as frivolous of 75 pleadings);
14. *Head v. America and God*, 896 F.2d 1367 (4th Cir. 1990) (affirming district court's dismissal of § 1983 action as frivolous);
15. *In re Head*, 927 F.2d 595 (4th Cir.) (affirming district court's dismissal of action as frivolous);
16. *Head v. North Carolina*, 931 F.2d 54 (4th Cir. 1991) (affirming the dismissal of complaint);
17. *In re Head*, 947 F.2d 941 (4th Cir. 1991) (affirming district court's dismissal of § 2254 and § 1983 actions), motion for leave to proceed *in forma pauperis* denied, 503 U.S. 904 (1992);
18. *In re Head*, 996 F.2d 1211 (4th Cir. 1993) (affirming the dismissal of 57 frivolous pleadings);
19. *In re Head*, 7 F.3d 223 (4th Cir. 1993) (affirming district court's dismissal of action);
20. *In re Head*, 19 F.3d 1429 (table) (4th Cir. 1994) (affirming denial of relief pursuant to 28 U.S.C. §§ 1915 and 2254);

21. *Head v. North Carolina Prisoner Legal Servs., Inc.*, 23 F.3d 401 (4th Cir. 1994) (affirming dismissal of § 1983 action);
22. *Head v. North Carolina*, 27 F.3d 563 (4th Cir. 1994) (affirming dismissal of § 1983 action);
23. *Head v. North Carolina*, 30 F.3d 129 (table) (4th Cir. 1994) (affirming dismissal of § 1983 action);
24. *Head v. Harris*, 30 F.3d 129 (table) (4th Cir. 1994) (affirming dismissal of § 1983 action);
25. *Head v. North Carolina*, 35 F.3d 556 (table) (4th Cir. 1994) (affirming dismissal of § 1983 action);
26. *Head v. North Carolina*, 46 F.3d 1124 (4th Cir. 1995) (affirming dismissal of § 1983 action);
27. *In re Head*, 67 F.3d 295 (4th Cir. 1995) (affirming dismissal of 86 frivolous filings and imposing pre-filing injunction);
28. *Head v. North Carolina*, 69 F.3d 532 (4th Cir. 1995) (affirming dismissal of frivolous action);
29. *Head v. North Carolina*, 89 F.3d 415 (4th Cir. 1996) (affirming dismissal of § 1983 action);
30. *Head v. North Carolina*, 89 F.3d 828 (4th Cir. 1996) (affirming dismissal of § 1983 action);
31. *Head v. Williamson*, 127 Fed. Appx. 99 (4th Cir. 2005) (affirming the denial of rehearing and release); and

33. *Head v. Williamson*, 127 Fed. Appx. 103 (4th Cir. 2005) (affirming the denial of rehearing).

In addition to these actions, Head was no stranger to the United States Supreme Court. In October 2001, that Court imposed an injunction against any future filings in noncriminal matters. *Head v. United States*, 534 U.S. 803 (2001) (“As the petitioner has repeatedly abused this Court’s process, the Clerk is directed not to accept any further petition in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and petition submitted in compliance with Rule 33.1.”).

Meanwhile in 1998, Head was indicted in this Court with nine counts of mailing threatening communications to the state district attorney who prosecuted him as well as the defense attorneys who represented him in connection with the rape case. He was convicted by jury verdict in July 2000 and sentenced by the undersigned to serve 360 months imprisonment in September 2001. On appeal, his conviction and sentence were affirmed by the United States Fourth Circuit Court of Appeals. *United States v. Head*, 42 Fed. Appx. 633 (4th Cir. 2002), *cert. denied*, 125 S. Ct. 226 (2004). After his appeal was decided, he filed 22 collateral motions between August and November of 2002, all of which were denied. On May 4, 2004, Head filed a motion pursuant to 28 U.S.C. § 2255 which was denied on May 12, 2004. Head’s appeal from that denial was dismissed on October 22, 2004. As a result, Head has no collateral relief available to him in this Court stemming from his federal conviction.

II. DISCUSSION

Since September 21, 1994, a pre-filing injunction with regard to Head has been in place in the United States District Court for the Western District of North Carolina. The terms of that injunction require that every writing, submission or pleading from Head be reviewed prior to filing for a determination as to whether it should be filed. The injunction, which was approved by the Fourth Circuit, has been in place since 1994 and has required extensive judicial review of his voluminous submissions. *In re Head*, 67 F.3d 295 (table), 1995 WL 590597 (4th Cir. 1995). Head has continuously flooded the court system for the past 11 years, often submitting two or three matters in a single day. All of his submissions relate to his convictions for rape and mailing threatening communications.¹ He repeatedly goes into graphic, offensive detail of his version of the rape. As occurred during his trial in this Court, he seemingly delights in recounting offensive, obscene purported facts involving the victims of his crimes. Frequently, Head does not sign his submissions but instead uses a sign which he explained during the trial in this Court was given to him by a worm one day while he was in the prison yard. He insists that he is due relief in the form of large property holdings surrounded by fences in the shape of his "sign" and describes the women who should be "stocked" in the property to provide him with sexual pleasure and children. Other requests include damages in the amount of "not less than 400 zillion dollars tax free and the legal deed to North Carolina."

This Court does not lightly contemplate the imposition of a permanent injunction. "[A] judge should not in any way limit a litigant's access to the courts absent 'exigent circumstances,

¹Sometimes Head references his conviction for manslaughter in the context of his writings but he is especially obsessed with his rape conviction which he blames for his subsequent conviction for mailing threatening communications.

such as a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions.'" *Cromer v. Kraft Foods North America, Inc.*, 390 F.3d 812, 818 (4th Cir. 2004) (quoting *Brow v. Farrelly*, 994 F.2d 1027, 1038 (3d Cir. 1993)). Likewise, the use of such a measure against a *pro se* litigant is approached with particular care. *Id.* However, in this case, the Court is effectively left with no other remedy.

In determining whether a[n] . . . injunction is substantively warranted, a court must weigh all the relevant circumstances, including (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions.

Id. Head's history of litigation has been set forth *infra*. His actions, motions and letters are duplicative, reiterating over and over again the same allegations and issues. There is no doubt that Head intends to harass the judicial system as the finality of his convictions and sentences has long since been established. Indeed, Head has completed his state sentence and is now serving the federal sentence. He has no good faith basis to continue to submit writings which contain details of the rape, manslaughter and outrageous allegations of conspiracy among the victims of his threatening communications. As for the burden on the court system, his submissions are so multitudinous and complex that a law clerk is required to peruse each paper, not an easy task given Head's handwriting and the fact that he writes on the front and back of papers as well as all over the envelopes in which he mails them. In the week preceding this opinion, Head submitted 14 writings, each of multiple pages and often containing nonsensical ramblings mixed in with legal jargon. In the 11 years since the imposition of this pre-filing review system, Head has shown no indication that he will ever cease his relentless harassment of the judicial system. Prior

to 1994, his writings were accumulated and dismissed once or twice a year. Undeterred, he continued to submit filings. Since 1994, despite the pre-filing review system, not a single submission has been filed due to the frivolous nature of the writings.² Yet, Head continues to inundate the Court with letters, motions, complaints, and other pleadings so frivolous as to defy legal description. Whether his submissions receive comment or not is of no merit; he sends them on in any event.

“Ultimately, the question the court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties.”

Safir v. United States Lines, Inc., 792 F.2d 19, 24 (2d Cir. 1986). There is no doubt that Head will continue to abuse the judicial system and, but for that system, harass the victims of his crimes as he has done in the past by attempting *ad nauseam* to sue them. Nonetheless, the Court’s

power to defend [its] ability to carry out [its] constitutional functions in no way depends upon the rights of private parties to relief. No litigant has the right to monopolize judicial resources and thus indirectly to obstruct other litigants asserting good faith claims. Absent the power to deter tactics like those employed by [Head], a small number of litigants could paralyze this court. [The] role here is thus not that of a dispute settler but that of an independent branch of government protecting its jurisdiction.

In re Martin-Trigona, 795 F.2d 9, 12 (2d Cir. 1986) (internal citations omitted).

As noted, the pre-filing review system has not deterred Head. That system has resulted in the expenditure of judicial resources to review each submission by him, a procedure which requires the time of judicial employees on an almost daily basis. Nor does the Court find that the

²There were some exceptions to this such as actions filed and immediately dismissed in the Charlotte Division and filings made in connection with Head’s federal prosecution.

imposition of a monetary sanction would in any manner curtail Head's writings. He is a federal prisoner and thus, judgment proof. Requiring him to pay a filing fee for the privilege of filing his submissions would only result in additional waste of judicial resources as the Clerk's office would be obligated to collect payments from him pursuant to 28 U.S.C. § 1915. *Neshewat v. Salem*, 365 F.Supp.2d 508, 529 (S.D.N.Y. 2005).

The imposition of a permanent injunction in this District does not leave Head without access to the federal court system. He is incarcerated in Massachusetts where any valid petition for habeas corpus relief or to challenge the conditions of his confinement must be brought as a matter of law. Head has no collateral relief left in this District absent permission from the Fourth Circuit Court of Appeals. In the event that Court should grant such permission, the injunction imposed in this District would be lifted for the limited purposes of entertaining the Circuit's mandate. For over 20 years, Head has inundated the Western District of North Carolina with nonsensical, harassing papers. The Court finds no other or less drastic relief will prevent his continued abusive conduct.

III. ORDER

IT IS, THEREFORE, ORDERED that the Clerk of Court shall file the 14 submissions attached to this Order.

IT IS FURTHER ORDERED that the pre-filing review system implemented in this Court in 1994 shall be amended to provide that Joseph Marion Head, Jr., and anyone acting on his behalf, is hereby permanently **ENJOINED** within the United States District Court for the Western District of North Carolina from filing any motion, pleading, action or writing arising out

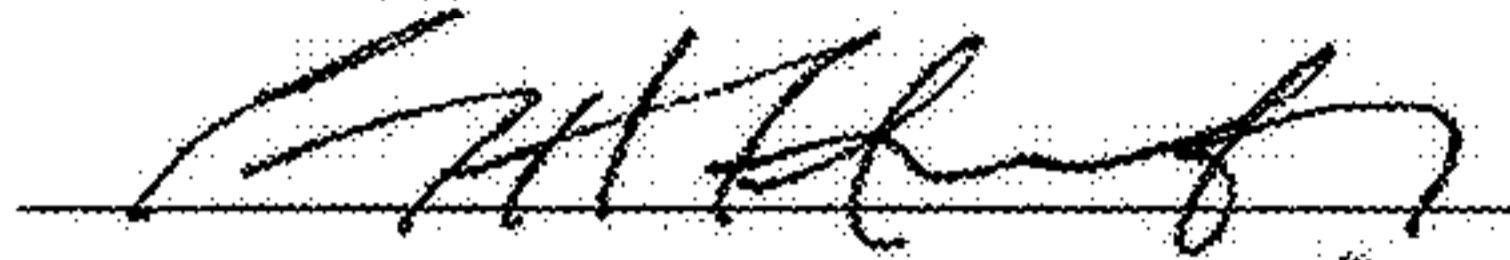
of the facts, circumstance and claims of any of the litigation listed in this opinion. Any submissions, writings or pleadings sent by Head to the Clerk of Court or to the Chambers of the undersigned or any other judicial officer of this District will not be reviewed or in any other manner acted upon.

IT IS FURTHER ORDERED that the Clerk of Court may file any notice of appeal submitted by Head from this decision.

IT IS FURTHER ORDERED that in the event the United States Court of Appeals for the Fourth Circuit issues a mandate allowing Head to file a second or successive motion pursuant to 28 U.S.C. § 2255, this injunction shall be lifted to that limited extent.

The Clerk of Court is instructed to provide copies of this opinion to each judicial officer and to each Clerk of Court's Office for the Western District of North Carolina.

Signed: July 7, 2005

A handwritten signature in black ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge



IN THE UNITED STATES DISTRICT COURT
FOR THE Western DISTRICT OF North Carolina

Joseph Marion Head Junior
Plaintiff,

Reg. No. 17549-056,

vs

United States of America
And
State of North Carolina

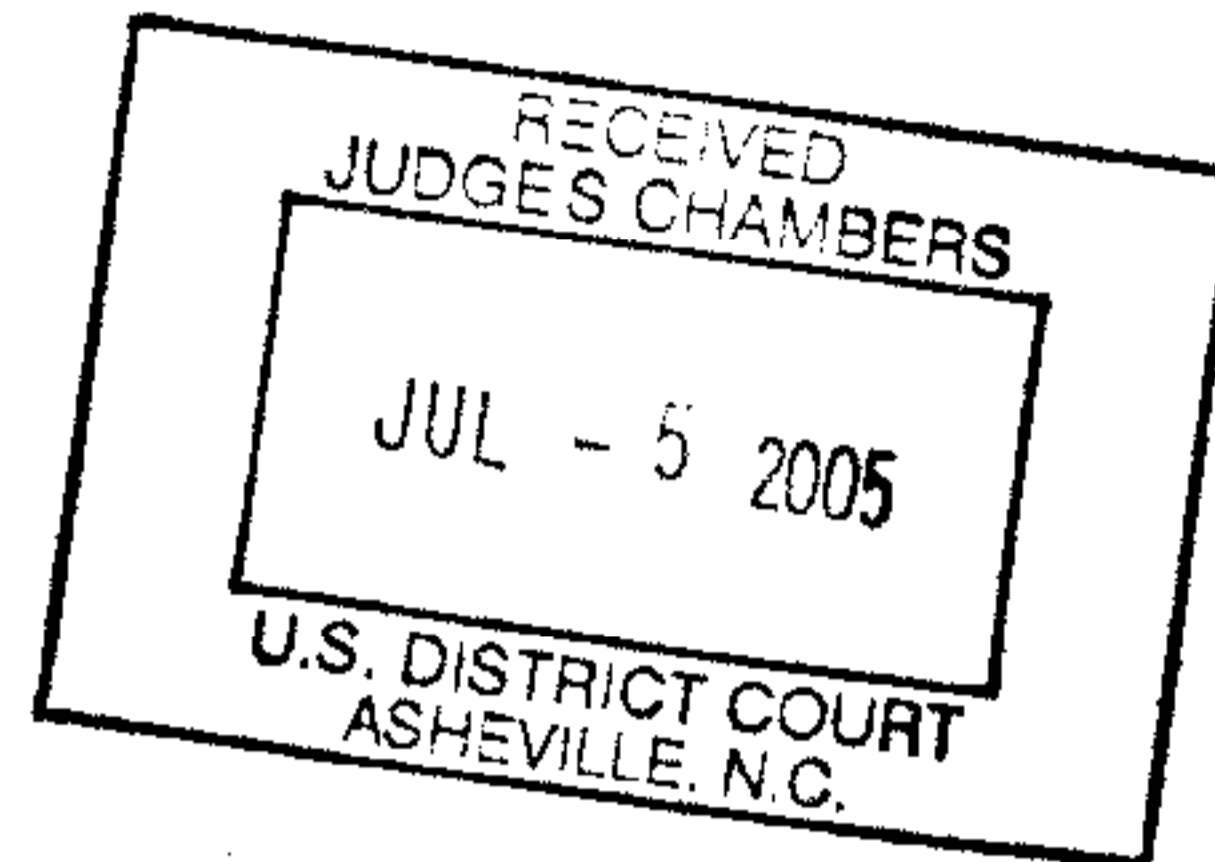
Defendants.

Case No. 1:05mc207C

FILED
ASHEVILLE, N. C.

JUL - 7 - 2005

U.S. DISTRICT COURT
W. DIST. OF N.C.



COMPLAINT

This is a civil rights act suit for damages for unlawful conviction and sentence and false imprisonment.

JURISDICTION

The court has legal jurisdiction herein pursuant to the provisions of law and Constitution which applies hereto, to include 42 U.S.C. §§ 1981, 1983, 1984, 1985(3) and 1986; 28 U.S.C. §§ 1331, 1341, 1342, 1343, 2201 and 2202; and the Federal Rules of Civil Procedure Rule 57.

PLAINTIFF

Plaintiff herein is Joseph Marion Head Junior Reg. No. 17549-056, who is a Federal prisoner housed in the IV-5 Cell 524 Federal Medical Center Devens located at P.O. Box 879 - Ayer - Massachusetts - 01432.

Plaintiff is in the custody of the Warden of the aforesaid institution, who is David L. Winn, Warden. Also, in the custody of the United States Attorney General.

DEFENDANTS

Defendants herein are as related below;

- (1) United States of America, Title United States of America
Address United States Attorney General, United States
Department of Justice - Washington - D.C. 20543
- (2) State of North Carolina, Title State of North Carolina
Address North Carolina Attorney General, North Carolina
Department of Justice, Raleigh, North Carolina 27602.

Plaintiff herein is proceeding pro se, without the legal assistance of a person trained in law and Plaintiff is a layman at law and has had no professional training in law and Plaintiff therefore respectfully moves the court for a liberal construction on and as to, all pleadings, claims, et c., herein and relating hereto.

That it is well settled that pro se litigants generally are entitled to a liberal construction of their pleadings, which should be read to raise the strongest argument they suggest. See: Green v. United States, 260 F 3d 78, 83 (2nd Cir. 2001), Haines v. Kerner, 404 U.S. 519, 520 - 21 (1972 per curiam).

Plaintiff's rights to counsel, legal assistance, et c., 18 U.S.C. § 3006(a) and et seq. thereof, U.S. Constitution Amendments Six and Fourteen. Plaintiff states that he does not waive this right to counsel, et c..

That the United States Court of Appeals for the Fourth Circuit prior, adjudged, that indigent laymen, (proceeding pro se) are not required to prove their asserted claims in advance of a full in court evidentiary hearing.

The background of Plaintiff and his State and Federal Court cases and all related and asserted therein and relating thereto, is related within the prison and court records of and relating to Plaintiff, prior and present. Plaintiff does not himself have a copy of said records, therefore, cannot state the background herein and therefore refers the Court to said records as for the background of same and all related and asserted and demanded therein and relating thereto to include all opinions, judgements and orders of the courts, et c., thereto.

GROUND'S ASSERTED HEREIN BY PLAINTIFF
PRO SE WITHOUT LEGAL ASSISTANCE OF A
PERSON PROFESSIONALLY TRAINED IN LAW

GROUND 1:

The convictions obtained in case no. 4-98-CR-102 was obtained in violation of the laws or Constitution of the United States or of the State of N.C. in the, in the ways related herein below and for the reasons stated herein below:

1. The reasons of the juror's ^{for their verdicts of guilty,} ~~was not proven~~ To be legal and valid prior to sentencing not on appeal nor post the appeal.
2. The convictions was not based on a legal and valid indictment based on the Statement of offenses in the indictment.
3. That it was not proven that plaintiff wilfully, deliberately, knowingly Did the acts to Violate 18 U.S.C. 876 nor in violation of said law.

GROUND 2:

The federal sentences of Plaintiff are illegal in that they were enhanced based on an unlawful conviction not legally proven to be legal, valid, final, prior to using same to enhance Plaintiff's federal sentence and or to obtain an upward departure and a greater sentence based upon said unlawful prior convictions. See: Title 21 U.S.C. § 851.

GROUND 3: The Federal Sentences Was Not Based On A Legal And Valid Conviction and indictment as required by law and constitution, Etc..

GROUND 4: Title 21 U.S.C. 851(e) is unconstitutional as applies. The Government can go back at least 15 years, Defendants can only go back 5 years, 21 U.S.C. 851(e).

GROUND 5: Booker, Fanfan, Blakely, Apprendice and Strickland v Washington 1984, as applies and as may be applied to Plaintiffs State and Federal Court Cases.

RELIEF DEMANDED BY PLAINTIFF PRO SE

1. Leave to proceed In Forma Pauperis
2. Appointment of counsel hereto
3. In court evidentiary hearing with the Plaintiff present for same.

4. Subpoena's issued to the below persons:

Each Person Involved With Plaintiffs State and Federal Cases, to include the Grand and Trial Jurors All Records etc. relating to Plaintiffs State and Federal Court Cases and Prison Records.

1. Name: _____, Address: _____

2. Name: _____, Address: _____

3. Name: _____, Address: _____

5. Grant and Order to Plaintiff, the maximum relief and money, authorized by law, Constitution, relating hereto.

Signed Joseph Marion Head Jr. Reg. No. 17549-056

Address: N-5 Cell 524 - Fed. Med. Center
Derens, 42 Patton Road - Post Office Box 879
Ayer - Massachusetts - 02210

CERTIFICATION OF SERVICE

I Joseph Marion Head Jr. Reg. No. 17549-056 state that
on the _____ day of June, 2005, I sent to the Court:
U.S. D.Ct. W.D.N.C. located at Asheville
North Carolina 28801

the original and (0) copies of the foregoing complaint and

I also sent a copy of said complaint to the Attorney General of
the United States, at: Not Sent, Did Not Have A

Copy To Send Nor had cost of Postage, The Court
and the Clerk must make the copies and serve same,
and send plaintiff a filed copy.

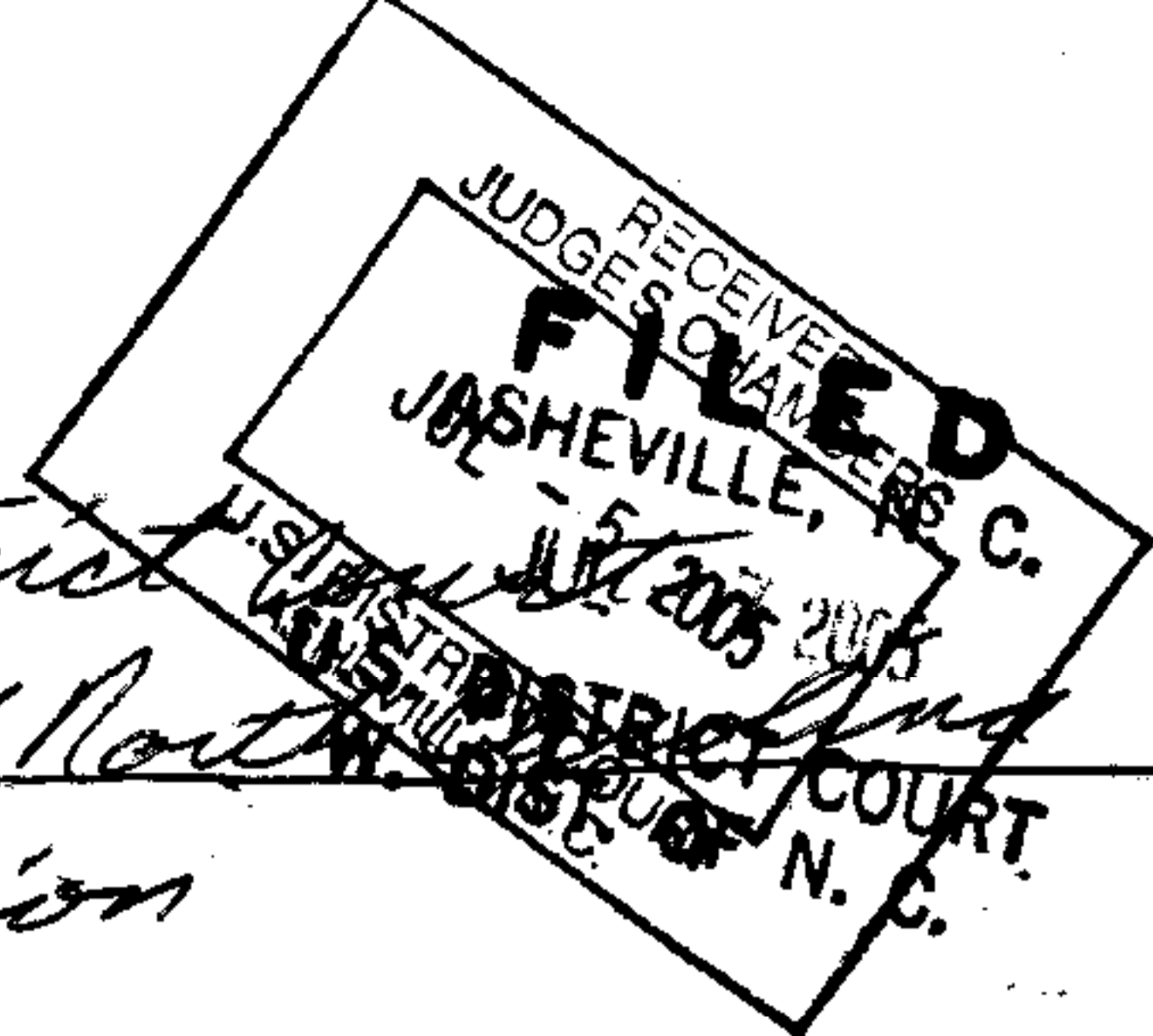
Signed Joseph Marion Head Jr. Reg. No. 17549-056

on this the _____ day of June, 2005.

The Court is heretofore referred to all prison and
court records relating to plaintiff from 1973
Forward to determine the indigence of plaintiff
therefrom and entitlements to proceed in
forma pauperis and for appointment of counsel
etc.

Joseph Marion Head Jr. 17549-056
— day of June 2005.

In The United States District
 For The Western District of North
Asheville Division



Joseph Marion Head Jr.
Reg. No. 17549-056
 Petitioner, Movant, Plaintiff,
 Appellant,
 VS

As Related of Court
Records

Respondents, Defendants,
Appellees.

Case Number U/K
See Ct. Recs

U.S. D. Ct. For N.C.,
W. Va., Boston Mass.

Case Number U/K See
Ct. Rec.

For U.S. Ct. App. For
1st and 4th Circuit

Case Number U/K See Ct.
Recs

U.S. Supreme Court

Motion For Appointment of Counsel
 Based On The Indigence of Joseph Marion Head Jr.
 Or Appoint Counsel For Cost of Same
 To Be Paid By Joseph Marion Head Jr. In Small
 Amounts As allowed and Ordered By The
 Court. U.S. Constitution Amendments
 1, 5, 6, 8, 9, 14 As Applies Hereto and 18 U.S.
 C. 3006 A and Sub Sec. thereof.

Now Comes, Joseph Marion Head Jr. Reg. No. 175
49-056 who is The, See Ct. Rec.
 in the above entitled cause and movant

herein, who himself pro se, respectfully moves the court to appoint him counsel in the aforesaid entitled cause, for the purpose of effectively representing movant in all matters etc. relating to the aforesaid entitled cause.

As To The Background Of Movant And His Criminal And Civil Cases And The Aforesaid Entitled Cause, Movant refers the Court to all known prison and court records relating to movant, past and present and all that relates to the aforesaid entitled cause.

Respectfully Presented On This The
30 day of June, 2005
Address N-5 cell 524 Federal Medical
Center Devens, Post Office Box 879 Ayer
Massachusetts 01432.

Certification of Service
Movant aforesaid, on the 30 day of June 2005
put the original copy of the foregoing motion
in the inmate mail box at, F.M.C. Devens

Where movant is housed as an inmate.
Signed, Joseph Marion Head Reg. No. 17549-056 Date 6-30-05

In The United States District Court
For The Western District of North Carolina
Asheville Division

RECEIVED
ASHEVILLE, N.C.

JUL - 5 2005

Clerk, U. S. Dist. Court
W. Dist of N. C.

United States of America
VS

Case Number
4-98-CR-102

Joseph Marion Head junior
Defendant

FILED
ASHEVILLE, N. C.

JUL - 7 2005

U.S. DISTRICT COURT
W. DIST. OF N. C.

Motion To Dismiss With Prejudice For
Violations of Constitutional Right To A
Speedy Trial By An Impartial Jury And
Judge. Strunk v United States supra, 1973,
Federal Rules of Criminal Procedure, Rule
48(b). United States Constitution Amendments
5, 8, 14, 6, 4, 1 As Applies Hereto And As May Be Applied

Now Comes, Joseph Marion Head junior, Reg.
No. 17549-056, defendant in the above
entitled cause and the movant herein,
who pro se respectfully moves the court
for a Dismissal With Prejudice For
Violations of Movant's Constitutional Rights
To A Speedy Trial By An Impartial
Jury And Judge.

Movant is presently housed in N-5 cell 524
of Federal Medical Center Revens - Located

at, 42 Patton Road, Post Office Box 879,
Ayer - Massachusetts - 01432. And
is in the custody of the Warden thereof,
who is, David L. Winn, also in the
custody of the United States Attorney General.

That as to the Background of Movant
and Movants Court cases (State and Federal)
and all relating to same, The Court
is referred to all known Prison and
Court record relating to movant, as if
same was related and stated herein
in proper order and form of same.

The Court relating hereto, make find-
ing of fact of records which states
the complete Background of movant
and movants prison and court records
and all related and asserted and asked
for and demanded within said records,

Unnecessary Delay in Asserting Charges,
As To Each of Movants Federal Charges.

Misprison of A Felony, Mr., Lowe,
Harris and Wolf, failed to timely
report to the Police and to the
United States Attorney, the Violations
of 18 U.S.C. 876, And so did the Staff
of North Carolina Department of Corrections.

Which caused about three years of delay in asserting the charges and in affording to movant, his rights to a speedy trial without unnecessary delay and unjustifiable delays in the asserting the charges, etc., and other types of delays also, That violated movant's rights to a speedy trial.

Rather Than Seeking Judicial Protections From The Courts And Police, Lawe, Harris, Wolf, Decided To And Plans To Take The Law Into Their Own Hands And Kill Movant When He Was Released From Prison, And Call It Self Defense And Because of Who They Was And Who Movant Was They Would Never Have Been convicted in A Court of Law. They was professionally trained in Law, therefore knewed what to do and say to get away with murder.

Conspiracy To Murder By Them,
Not To Seek Justice By Them,
Conspiracy To Convict Movant of Federal and State charges. See All Court Records Relating To Movant and Etc. Therein and relating thereto (Strickland v Washington 1984)

Mr. Lowe and Wolf and Harris's Wife knows just what and how to testify to at movant's Federal trial. See how said testimony relates to or somewhat copies the Movie, Cape Fear, what was said and done in it.

Title 21 U.S.C. 851(e) State a five year time limitation for the defendant and does not state a time of limitations for the Government. The Government is allowed to prosecute but the defendant is not allowed to defend, because of the cost of keeping court records over 5 years. If the Government does not get its information from the court records, where does it get it from and why can't the defendant do it also?

Was Movant herein effectively represented relating to Title 21 U.S.C. 851 and all relating thereto? If so, how so and when etc? If not, How and Why Not? The Prior charges and convictions Was not Legal, Valid, Final. Signed, Joseph Marion Head Junior, 6-29-05

IN THE UNITED STATES DISTRICT COURT

FOR THE

Western

DISTRICT OF

North Carolina

Joseph Marion Head Jr.
Plaintiff,

Reg. No. 17549-056,

VS

United States America

And

State of North Carolina,

Defendants.

FILED
ASHEVILLE, N. C.

JUL - 7 2005

RECEIVED
ASHEVILLE, N.C.

U.S. DISTRICT COURT JUL - 5 2005
W. DIST. OF N. C. Clerk, U. S. Dist. Court
W. Dist of N. C.

Case No. _____

COMPLAINT

This is a civil rights act suit for damages for unlawful conviction and sentence and for false imprisonment

JURISDICTION

The court has legal jurisdiction herein pursuant to the provisions of law and Constitution which applies hereto, to include 42 U.S.C. §§ 1981, 1983, 1984, 1985(3) and 1986; 28 U.S.C. §§ 1331, 1341, 1342, 1343, 2201 and 2202; and the Federal Rules of Civil Procedure Rule 57.

PLAINTIFF

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17549-056 who is a Federal prisoner housed in the N-5 Cell 524

Federal Medical Center Devens located at

42 Patton Road - P.O. Box 879 - Ayer - Massachusetts 01432

Plaintiff is in the custody of the Warden of the aforesaid institution, who is David L. Winn, Warden. Also, in the custody of the United States Attorney General.

DEFENDANTS

Defendants herein are as related below;

(1) United States America, Title United States America

Address United States Attorney General - United States
Department of Justice - Washington - D.C. 20543

(2) North Carolina, Title State of North Carolina

Address North Carolina Attorney General - N.C. Dept.
of Justice - Raleigh - North Carolina 27602

Plaintiff herein is proceeding pro se, without the legal assistance of a person trained in law and Plaintiff is a layman at law and has had no professional training in law and Plaintiff therefore respectfully moves the court for a liberal construction on and as to, all pleadings, claims, et c., herein and relating hereto.

That it is well settled that pro se litigants generally are entitled to a liberal construction of their pleadings, which should be read to raise the strongest argument they suggest. See: Green v. United States, 260 F 3d 78, 83 (2nd Cir. 2001), Haines v. Kerner, 404 U.S. 519, 520 - 21 (1972 per curiam).

Plaintiff's rights to counsel, legal assistance, et c., 18 U.S.C. § 3006(a) and et seq. thereof, U.S. Constitution Amendments Six and Fourteen. Plaintiff states that he does not waive this right to counsel, et c..

That the United States Court of Appeals for the Fourth Circuit prior, adjudged, that indigent laymen, (proceeding pro se) are not required to prove their asserted claims in advance of a full in court evidentiary hearing.

The background of Plaintiff and his State and Federal Court cases and all related and asserted therein and relating thereto, is related within the prison and court records of and relating to Plaintiff, prior and present. Plaintiff does not himself have a copy of said records, therefore, cannot state the background herein and therefore refers the Court to said records as for the background of same and all related and asserted and demanded therein and relating thereto to include all opinions, judgements and orders of the courts, et c., thereto.

GROUND'S ASSERTED HEREIN BY PLAINTIFF
PRO SE WITHOUT LEGAL ASSISTANCE OF A
PERSON PROFESSIONALLY TRAINED IN LAW

GROUND 1:

The convictions obtained in case no. 74CR2403-74CR2403A was obtained in violation of the laws or Constitution of the United States or of the State of N.C. in the in the ways related herein below and for the reasons stated herein below:

1. The State of N.C. Failed To Legally Prove That, Griffen, Did Not Commit Perjury To Convict Plaintiff At Each Of His Trials of 74CR2403-74CCR2403A
2. Violative of Plaintiffs 5, 6, 14 Amendment Rights The Trial Judge Declared A Mistrial in 74CR2403 And Discharged The Chosen Jury Without Plaintiffs Lawful Consent;
3. Violative of Plaintiffs 5th, 6th, 14th. Amendments Rights, A Retrial of The Mistrial of 74CR2403 Was Conducted And Plaintiff Was Sentenced By Trial Judge,

GROUND 2:

The federal sentences of Plaintiff are illegal in that they were enhanced based on an unlawful conviction not legally proven to be legal, valid, final, prior to using same to enhance Plaintiff's federal sentence and or to obtain an upward departure and a greater sentence based upon said unlawful prior convictions. See: Title 21 U.S.C. § 851.

GROUND 3: Violative of State And Federal Law And Constitution Plaintiff Was Sentenced And Forced To Fully Serve The Sentences of 74-CR2403-74CR-2403A-See Prison And Ct. Records.

GROUND 4: Violative of Laws And Constitutions and Plaintiffs Rights, Plaintiff Was Forced To Represent His Own Self At The Last Court Trial of 74CR2403 in August 1976

GROUND 5: Violative of Laws, Constitution, Plaintiffs Rights, Plaintiffs State And Federal Court Appointed Attorneys Failed To Present To The Courts All Claims, Etc Made By Plaintiff Which Should Have Be Presented.

RELIEF DEMANDED BY PLAINTIFF PRO SE

1. Leave to proceed In Forma Pauperis
2. Appointment of counsel hereto
3. In court evidentiary hearing with the Plaintiff present

for same.

4. Subpoena's issued to the below persons:

All Prison And Court Records etc. Relating To Plaintiff.

1. Name: _____, Address: _____

All Persons Relating To Plaintiffs Court Cases.

2. Name: _____, Address: _____

Each Lawyer of Rutherford County, N.C. 1976 Aug.
3. Name: _____, Address: _____

5. Grant and Order to Plaintiff, the maximum relief and money, authorized by law, Constitution, relating hereto.

Signed Joseph Marion Hearsh, Reg. No. 17549-056

Address: N-5 Cell 524 Fed. Med. Center Devens
42 Patton Road - Post Office Box 879 -
Ayer - Massachusetts - ~~02220~~ 01432

CERTIFICATION OF SERVICE

I, Joseph Marion Hearsh, Reg. No. 17549-056, state that
on the 29 day of June, 2005, I sent to the Court:
U.S.D.Ct. W.D.N.C. located at Asheville
North Carolina 28801

the original and (0) copies of the foregoing complaint and

I also sent a copy of said complaint to the Attorney General of
the United States, at: Not Sent - Plaintiff did not

have a copy to send nor one for himself
and to, and did not have funds to make copies
with and pay cost of postage.

Signed Joseph Marion Hearsh, Reg. No. 17549-056

on this the 29 day of June, 2005.

The Court is referred to plaintiff's prison and
court records for the past 31 years, to see the
indigence of Plaintiff and his entitlement to
proceed in forma pauperis and for appointment
of counsel, etc. The Court Order the Clerk of Court
to make and serve all requires copies of this
complaint and send Plaintiff a filed copy of same.
Joseph Marion Hearsh Jun 29 17549-056 (6-29-05)

Amendment To Pending Complaint

Filed in June 2005 of Head's

Civil rights act law suit ~~for~~ ^{vs.} ~~by~~ ^{U.S. A. Curnin} ~~in~~ ^{vs.} ~~the~~ ^{W.D. Dwyer}
in the form of U.S. A. Curnin ^{vs.} ~~by~~ ^{W.D. Dwyer}

The conviction is unlawful, ¹⁹¹⁸ ^{RIGHTS} ¹⁹¹⁵ ^{UP} ¹⁹¹⁷ ¹⁹¹⁸ ¹⁹¹⁹ ¹⁹²⁰ ¹⁹²¹ ¹⁹²² ¹⁹²³ ¹⁹²⁴ ¹⁹²⁵ ¹⁹²⁶ ¹⁹²⁷ ¹⁹²⁸ ¹⁹²⁹ ¹⁹³⁰ ¹⁹³¹ ¹⁹³² ¹⁹³³ ¹⁹³⁴ ¹⁹³⁵ ¹⁹³⁶ ¹⁹³⁷ ¹⁹³⁸ ¹⁹³⁹ ¹⁹⁴⁰ ¹⁹⁴¹ ¹⁹⁴² ¹⁹⁴³ ¹⁹⁴⁴ ¹⁹⁴⁵ ¹⁹⁴⁶ ¹⁹⁴⁷ ¹⁹⁴⁸ ¹⁹⁴⁹ ¹⁹⁵⁰ ¹⁹⁵¹ ¹⁹⁵² ¹⁹⁵³ ¹⁹⁵⁴ ¹⁹⁵⁵ ¹⁹⁵⁶ ¹⁹⁵⁷ ¹⁹⁵⁸ ¹⁹⁵⁹ ¹⁹⁶⁰ ¹⁹⁶¹ ¹⁹⁶² ¹⁹⁶³ ¹⁹⁶⁴ ¹⁹⁶⁵ ¹⁹⁶⁶ ¹⁹⁶⁷ ¹⁹⁶⁸ ¹⁹⁶⁹ ¹⁹⁷⁰ ¹⁹⁷¹ ¹⁹⁷² ¹⁹⁷³ ¹⁹⁷⁴ ¹⁹⁷⁵ ¹⁹⁷⁶ ¹⁹⁷⁷ ¹⁹⁷⁸ ¹⁹⁷⁹ ¹⁹⁸⁰ ¹⁹⁸¹ ¹⁹⁸² ¹⁹⁸³ ¹⁹⁸⁴ ¹⁹⁸⁵ ¹⁹⁸⁶ ¹⁹⁸⁷ ¹⁹⁸⁸ ¹⁹⁸⁹ ¹⁹⁹⁰ ¹⁹⁹¹ ¹⁹⁹² ¹⁹⁹³ ¹⁹⁹⁴ ¹⁹⁹⁵ ¹⁹⁹⁶ ¹⁹⁹⁷ ¹⁹⁹⁸ ¹⁹⁹⁹ ²⁰⁰⁰ ²⁰⁰¹ ²⁰⁰² ²⁰⁰³ ²⁰⁰⁴ ²⁰⁰⁵ ²⁰⁰⁶ ²⁰⁰⁷ ²⁰⁰⁸ ²⁰⁰⁹ ²⁰¹⁰ ²⁰¹¹ ²⁰¹² ²⁰¹³ ²⁰¹⁴ ²⁰¹⁵ ²⁰¹⁶ ²⁰¹⁷ ²⁰¹⁸ ²⁰¹⁹ ²⁰²⁰ ²⁰²¹ ²⁰²² ²⁰²³ ²⁰²⁴ ²⁰²⁵ ²⁰²⁶ ²⁰²⁷ ²⁰²⁸ ²⁰²⁹ ²⁰³⁰ ²⁰³¹ ²⁰³² ²⁰³³ ²⁰³⁴ ²⁰³⁵ ²⁰³⁶ ²⁰³⁷ ²⁰³⁸ ²⁰³⁹ ²⁰⁴⁰ ²⁰⁴¹ ²⁰⁴² ²⁰⁴³ ²⁰⁴⁴ ²⁰⁴⁵ ²⁰⁴⁶ ²⁰⁴⁷ ²⁰⁴⁸ ²⁰⁴⁹ ²⁰⁵⁰ ²⁰⁵¹ ²⁰⁵² ²⁰⁵³ ²⁰⁵⁴ ²⁰⁵⁵ ²⁰⁵⁶ ²⁰⁵⁷ ²⁰⁵⁸ ²⁰⁵⁹ ²⁰⁶⁰ ²⁰⁶¹ ²⁰⁶² ²⁰⁶³ ²⁰⁶⁴ ²⁰⁶⁵ ²⁰⁶⁶ ²⁰⁶⁷ ²⁰⁶⁸ ²⁰⁶⁹ ²⁰⁷⁰ ²⁰⁷¹ ²⁰⁷² ²⁰⁷³ ²⁰⁷⁴ ²⁰⁷⁵ ²⁰⁷⁶ ²⁰⁷⁷ ²⁰⁷⁸ ²⁰⁷⁹ ²⁰⁸⁰ ²⁰⁸¹ ²⁰⁸² ²⁰⁸³ ²⁰⁸⁴ ²⁰⁸⁵ ²⁰⁸⁶ ²⁰⁸⁷ ²⁰⁸⁸ ²⁰⁸⁹ ²⁰⁹⁰ ²⁰⁹¹ ²⁰⁹² ²⁰⁹³ ²⁰⁹⁴ ²⁰⁹⁵ ²⁰⁹⁶ ²⁰⁹⁷ ²⁰⁹⁸ ²⁰⁹⁹ ²¹⁰⁰ ²¹⁰¹ ²¹⁰² ²¹⁰³ ²¹⁰⁴ ²¹⁰⁵ ²¹⁰⁶ ²¹⁰⁷ ²¹⁰⁸ ²¹⁰⁹ ²¹¹⁰ ²¹¹¹ ²¹¹² ²¹¹³ ²¹¹⁴ ²¹¹⁵ ²¹¹⁶ ²¹¹⁷ ²¹¹⁸ ²¹¹⁹ ²¹²⁰ ²¹²¹ ²¹²² ²¹²³ ²¹²⁴ ²¹²⁵ ²¹²⁶ ²¹²⁷ ²¹²⁸ ²¹²⁹ ²¹³⁰ ²¹³¹ ²¹³² ²¹³³ ²¹³⁴ ²¹³⁵ ²¹³⁶ ²¹³⁷ ²¹³⁸ ²¹³⁹ ²¹⁴⁰ ²¹⁴¹ ²¹⁴² ²¹⁴³ ²¹⁴⁴ ²¹⁴⁵ ²¹⁴⁶ ²¹⁴⁷ ²¹⁴⁸ ²¹⁴⁹ ²¹⁵⁰ ²¹⁵¹ ²¹⁵² ²¹⁵³ ²¹⁵⁴ ²¹⁵⁵ ²¹⁵⁶ ²¹⁵⁷ ²¹⁵⁸ ²¹⁵⁹ ²¹⁶⁰ ²¹⁶¹ ²¹⁶² ²¹⁶³ ²¹⁶⁴ ²¹⁶⁵ ²¹⁶⁶ ²¹⁶⁷ ²¹⁶⁸ ²¹⁶⁹ ²¹⁷⁰ ²¹⁷¹ ²¹⁷² ²¹⁷³ ²¹⁷⁴ ²¹⁷⁵ ²¹⁷⁶ ²¹⁷⁷ ²¹⁷⁸ ²¹⁷⁹ ²¹⁸⁰ ²¹⁸¹ ²¹⁸² ²¹⁸³ ²¹⁸⁴ ²¹⁸⁵ ²¹⁸⁶ ²¹⁸⁷ ²¹⁸⁸ ²¹⁸⁹ ²¹⁹⁰ ²¹⁹¹ ²¹⁹² ²¹⁹³ ²¹⁹⁴ ²¹⁹⁵ ²¹⁹⁶ ²¹⁹⁷ ²¹⁹⁸ ²¹⁹⁹ ²²⁰⁰ ²²⁰¹ ²²⁰² ²²⁰³ ²²⁰⁴ ²²⁰⁵ ²²⁰⁶ ²²⁰⁷ ²²⁰⁸ ²²⁰⁹ ²²¹⁰ ²²¹¹ ²²¹² ²²¹³ ²²¹⁴ ²²¹⁵ ²²¹⁶ ²²¹⁷ ²²¹⁸ ²²¹⁹ ²²²⁰ ²²²¹ ²²²² ²²²³ ²²²⁴ ²²²⁵ ²²²⁶ ²²²⁷ ²²²⁸ ²²²⁹ ²²³⁰ ²²³¹ ²²³² ²²³³ ²²³⁴ ²²³⁵ ²²³⁶ ²²³⁷ ²²³⁸ ²²³⁹ ²²⁴⁰ ²²⁴¹ ²²⁴² ²²⁴³ ²²⁴⁴ ²²⁴⁵ ²²⁴⁶ ²²⁴⁷ ²²⁴⁸ ²²⁴⁹ ²²⁵⁰ ²²⁵¹ ²²⁵² ²²⁵³ ²²⁵⁴ ²²⁵⁵ ²²⁵⁶ ²²⁵⁷ ²²⁵⁸ ²²⁵⁹ ²²⁶⁰ ²²⁶¹ ²²⁶² ²²⁶³ ²²⁶⁴ ²²⁶⁵ ²²⁶⁶ ²²⁶⁷ ²²⁶⁸ ²²⁶⁹ ²²⁷⁰ ²²⁷¹ ²²⁷² ²²⁷³ ²²⁷⁴ ²²⁷⁵ ²²⁷⁶ ²²⁷⁷ ²²⁷⁸ ²²⁷⁹ ²²⁸⁰ ²²⁸¹ ²²⁸² ²²⁸³ ²²⁸⁴ ²²⁸⁵ ²²⁸⁶ ²²⁸⁷ ²²⁸⁸ ²²⁸⁹ ²²⁹⁰ ²²⁹¹ ²²⁹² ²²⁹³ ²²⁹⁴ ²²⁹⁵ ²²⁹⁶ ²²⁹⁷ ²²⁹⁸ ²²⁹⁹ ²³⁰⁰ ²³⁰¹ ²³⁰² ²³⁰³ ²³⁰⁴ ²³⁰⁵ ²³⁰⁶ ²³⁰⁷ ²³⁰⁸ ²³⁰⁹ ²³¹⁰ ²³¹¹ ²³¹² ²³¹³ ²³¹⁴ ²³¹⁵ ²³¹⁶ ²³¹⁷ ²³¹⁸ ²³¹⁹ ²³²⁰ ²³²¹ ²³

Deprivation of Liberty Without Due Process
and Equal Protection of Law, Constitution
Motion To Vacate Sentence And Judgment

An especially rigorous standard of review applies when the government knowingly offers false testimony. A conviction obtained by the knowing use of perjured testimony must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's verdict. *United States v. Bagley* 473 U.S. 667, 682 (1985); *Napue v. Illinois* 360 U.S. 264 (1959) and see *Chapman v. California* 386 U.S. 18 (1967).

See Title 21 U.S.C. 851(V) and see the below.
The Government Must Give Notice That The
Enhancement Provisions Apply

The Government must file, and serve on counsel
or the defendant, an information alleging
the prior convictions on which it relies.

Dobkin v District of Columbia 194 A.2d. 657, 659
-60 (D.C. 1963)

Baswell v United States 511 A.2d. 29, 31 (D.C. 1986)

Enhancement papers must be filed before trial
or entry of a guilty plea. Erskines v United States
696 A.2d. 1077, 1082 (D.C. 1997)

Where Government did not file necessary
enhancement papers before trial. This means
before the process of impaneling the jury has
begun. Key v United States 587 A.2d. 1072, 1073
(D.C. 1991)

Because the papers must be filed before jeopardy
attaches, they should be filed before the first
witness and first jury is sworn in bench
and jury trials.

The trial judge may not, after learning of a
prior conviction that would support an
enhanced sentence, suggest that enhancement
Papers be filed. Brandon v United States 239 A.2d.
159, 161 (D.C. 1968)

See, Finney v U.S. 527 A.2d. 733, 735 (D.C. 1987)

(2)

The government may seek a continuance in order to file information if it could not have obtained the necessary facts earlier with due diligence.

If counsel is served with the information, the defendant need not be personally served. *Willingham v United States* 467 A.2d. 742, 744, (D.C. 1983)

The privilege against self-incrimination applies, the defendant need not respond to the judge's questions, and exercise of the privileges cannot be the foundation of enhanced penalties. *Boswell v United States* 511, A.2d. 29, 31 (D.C. 1986) at 33. The court must also inform the defendant that failure to challenge a prior conviction before sentencing is a waiver, *Smith v United States* 491 A.2d. 1144, 1149 (D.C. 1985)

When the defendant receives sufficient actual notice, technical violations will not result in reversal, absent prejudice to the defendant. *Norman v United States* 623 A.2d. 1165, 1169-70 (D.C. 1993) *Coleman v United States* 628, A.2d. 1005, 1009 (D.C. 1993) See, *Lucas v U.S.* 602, A.2d. 1107 (D.C. 1992)

State and Federal Cases
of Head.

Defendant was not given due notice that he could and would face a charge and trial on the lesser offenses, prior to having to make a choice of what plea to enter nor at any other time for any other purpose.

In Re. W.B.W. 397 A.2d. 143, 148 (D.C. 1979)

Hall v United States 343 A.2d. 35 (D.C. 1975)

United States v Whitaker 144 U.S. App. D.C. 344 - 347 F.2d. 314 (1971)

✓ see United States v Bradford 344 A.2d. 208, 218 (D.C. 1975) Reed v United States 584 A.2d. 585, 590 (D.C. 1990)

Nathan Jones (v) United States 544 A.2d. 1250 (D.C. 1988)

Blackburner v United States 1932 West.

Defendant was not given due notice that the Government's Attorney could and would use prior conviction to enhance the federal sentences nor could use same to obtain an upward departure and greater sentence. Prior to defendant having to make a choice of which plea to enter and why. Defendant's plea would have been guilty had he known the aforesaid prior to plea. The federal sentences is therefore illegal.

To Each State and Federal Court in U. S. A.
42 U.S.C. 1983, 28 U.S.C. 1331, 1343, Law Suit
One Billion Dollars Tax Free Per Each Day That
Head is And Was Illegally In Custody Is Demand
ed Pro Se By Head As Legal Relief To Him.
Unlawful Convictions And Sentences.

Deprivation of Liberty Without Due Process Or
Equal Protection of Law, Constitution, Etc.,

Failure To Apply The Fork In The Road Test

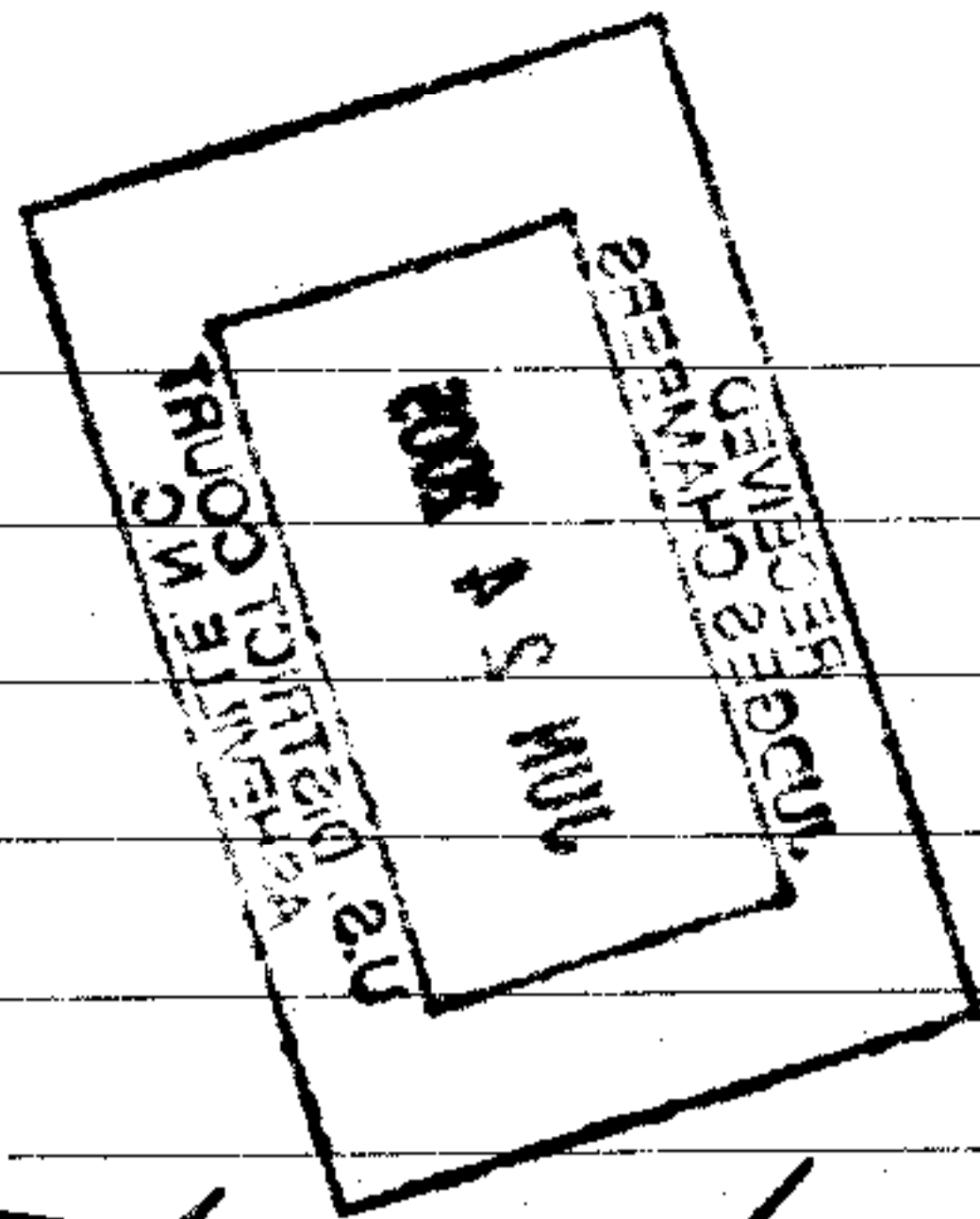
Fork In The Road Test

If at the scene of the crime, the defendant
can be said to have realized that he has
come to a fork in the road, and nevertheless
decides to invade a different interest, then
his successive intentions make him subject
to cumulative punishment.

The defendant must know which law
he will violate by the acts done by him
in order to wilfully, deliberately and
knowingly violate a law.

If the defendant does the acts to
violate one law or prison rule and he
does not know the same acts violates
another law also. The defendant
did not deliberately and knowingly violate
the law aforesaid. Defendant's legal reasons
for him not knowing the law at the
time of the offense justifies the wrong
and makes it not a violation of the law.

Head did not know that he was violating the
alleged violated by him at the time a



Petitioner is in custody under the sentence of the U.S.D.C.

claiming the right to relief and release.

The sentence was imposed in violation of the Laws or Constitution of the United States or the State of _____

or the court was without jurisdiction to impose the sentence, or the sentence was in excess of the maximum authorized by law or constitution, or the sentence is otherwise subject to collateral attack, may be corrected at any time.

Prior Conviction exception stated in *Almendarez - Torres v United States* 523 U.S. 224 (1997), Apprendi Blackely, *Booper*

The prior state conviction was unlawful and the enhancement based thereon made the federal sentences illegal same as to upward departure.

IN THE UNITED STATES DISTRICT COURT
FOR THE Western DISTRICT OF North Carolina

Joseph Marion Head Jr.)
Plaintiff,)

Reg. No. 17549-056,)

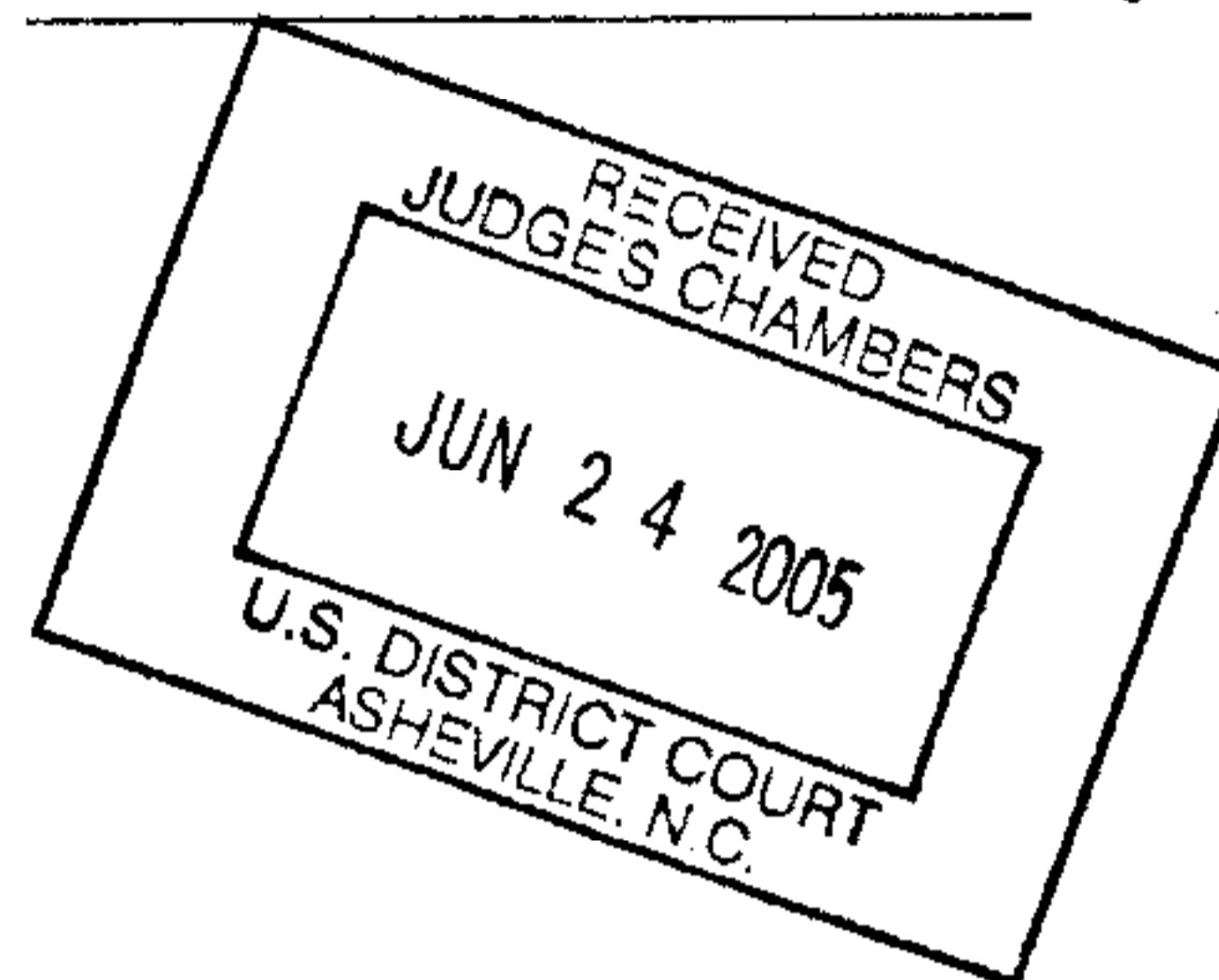
vs)

United States of)
America)

Defendants.)

Case No. _____

FILED
ASHEVILLE, N. C.
JUL - 7-2005
U.S. DISTRICT COURT
W. DIST. OF N. C.



COMPLAINT

This is a civil rights act suit for damages for unlawful conviction and sentence.

JURISDICTION

The court has legal jurisdiction herein pursuant to the provisions of law and Constitution which applies hereto, to include 42 U.S.C. §§ 1981, 1983, 1984, 1985(3) and 1986; 28 U.S.C. §§ 1331, 1341, 1342, 1343, 2201 and 2202; and the Federal Rules of Civil Procedure Rule 57.

PLAINTIFF

Plaintiff herein is, Joseph Marion Head Jr. Reg. No. 17549056 who is a Federal prisoner housed in the N-5 Cell 524 Federal Medical Center Danvers located at Post Office Box 879 - Ayer - Ma. 01432

Plaintiff is in the custody of the Warden of the aforesaid institution, who is David L. Winn Warden. Also, in the custody of the United States Attorney General.

DEFENDANTS

Defendants herein are as related below;

(1) United States America Title U.S. A.,
Address Attorney General of United States, U.S.
Dept. of Justice, Washington, D.C. 20543
(2) _____, Title _____,
Address _____

Plaintiff herein is proceeding pro se, without the legal assistance of a person trained in law and Plaintiff is a layman at law and has had no professional training in law and Plaintiff therefore respectfully moves the court for a liberal construction on and as to, all pleadings, claims, et c., herein and relating hereto.

That it is well settled that pro se litigants generally are entitled to a liberal construction of their pleadings, which should be read to raise the strongest argument they suggest. See: Green v. United States, 260 F 3d 78, 83 (2nd Cir. 2001), Haines v. Kerner, 404 U.S. 519, 520 - 21 (1972 per curiam).

Plaintiff's rights to counsel, legal assistance, et c., 18 U.S.C. § 3006(a) and et seq. thereof, U.S. Constitution Amendments Six and Fourteen. Plaintiff states that he does not waive this right to counsel, et c..

That the United States Court of Appeals for the Fourth Circuit prior, adjudged, that indigent laymen, (proceeding pro se) are not required to prove their asserted claims in advance of a full in court evidentry hearing.

The background of Plaintiff and his State and Federal Court cases and all related and asserted therein and relating thereto, is related within the prison and court records of and relating to Plaintiff, prior and present. Plaintiff does not himself have a copy of said records, therefore, cannot state the background herein and therefore refers the Court to said records as for the background of same and all related and asserted and demanded therein and relating thereto to include all opinions, judgements and orders of the courts, et c., thereto.

GROUND'S ASSERTED HEREIN BY PLAINTIFF
PRO SE WITHOUT LEGAL ASSISTANCE OF A
PERSON PROFESSIONALLY TRAINED IN LAW

GROUND 1:

(Federal)

The convictions obtained in case no. 4-98-CR-102 was obtained in violation of the laws or Constitution of the United States or of the State of N.C. in the in the ways related herein below and for the reasons stated herein below:

1. Prosecution Failed To Legally Prove Criminal intent to violate 18 U.S.C. 876.
Head's Acts was deliberate to violate
Only A Prison Rule. See Transcript of Trial.
2. Prosecution Failed To Legally Prove That
Head Wilfully, Deliberately, Knowingly
Did Acts To Violate 18 U.S.C. 876 or
in violation of 18 U.S.C. 876.
3. Prosecution Did Not Prove The Reasons
of Each juror For Their Verdicts Of Guilty
To Be Legal And Valid Nor Prior
To Sentencing Nor On Appeal, Etc..

GROUND 2:

The federal sentences of Plaintiff are illegal in that they were enhanced based on an unlawful conviction not legally proven to be legal, valid, final, prior to using same to enhance Plaintiff's federal sentence and or to obtain an upward departure and a greater sentence based upon said unlawful prior convictions. See: Title 21 U.S.C. § 851.

GROUND 3: The sentence was imposed in violation of the laws or constitution of the United States and or the State of -

GROUND 4: The Court was without legal jurisdiction to impose the sentence(s) or the sentence was excessive the maximum authorized by law etc or cases laws as applies

GROUND 5: The sentence is subject to constitutional or collateral attack and Booker, Tanphan, Blakely, Apprendice and Strickland v Washington 1984, As Applies.

RELIEF DEMANDED BY PLAINTIFF PRO SE

1. Leave to proceed In Forma Pauperis
2. Appointment of counsel hereto
3. In court evidentiary hearing with the Plaintiff present for same.

4. Subpoena's issued to the below persons:

Each Person Involved In 4-98-CR-102, Past
1. Name: _____, Address: _____

and Present
Each Person and Records Relating To
2. Name: _____, Address: _____
Plaintiffs Prior State Cases from N.C.

Each Person Relating To Plaintiffs Civil

3. Name: _____, Address: _____

Commitment 18 U.S.C. 4245(1)

5. Grant and Order to Plaintiff, the maximum relief and money, authorized by law, Constitution, relating hereto.

Signed Joseph Marion Head Jr. Reg. No. 17549-056

Address: N-5 Cell 524 - Z. M. C. Devens

Post Office Box 879 Ayer - Ma.
01432.

CERTIFICATION OF SERVICE

I, Joseph Marion Head Jr. Reg. No. 17549056, state that on the 18 day of June, 2005, I sent to the Court: U.S.D.Ct. W.D. N.C. Asheville located at 309 U.S. Courthouse Building - 100 Otis Street - Asheville, N.C. 28801 the original and (0) copies of the foregoing complaint and I also sent a copy of said complaint to the Attorney General of the United States, at: Not sent due to plaintiffs indigence nor was any copies made and to, Not even one for plaintiff.

Signed Joseph Marion Head Jr. Reg. No. 17549056

on this the 18 day of June, 2005.

The Court will have to order Z. M. C. Devens to send to the Court a copy of Plaintiffs Trust Funds For The Past Six Months and further must review plaintiffs State and Federal Court records to see if plaintiff is indigent or not and when and how long indigent. Allow Plaintiff to proceed in forma pauperis and appoint Counsel Hereto. Based on the aforesaid and send Plaintiff a filed copy of this complaint Etc.
Joseph Marion Head Jr. 17549056 (6-18-05)

TO: (Name and Title of Staff Member)	DATE:
FROM:	REGISTER NO.:
WORK ASSIGNMENT:	UNIT:

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

*Failure to re prosecute the anistrial within the
Time required by law 18 U.S.C. 3161(e) - N.C.
G.S. 15-110-2, 15A-711(c) Required and Requires
Dismissal With Prejudice and for denial
of a speedy trial (No Showing of Prejudice
required. United States v McNeil 386 U.S. App.
D.C. 26, 30, 911 F.2d. 768, 772 (1990), Strunk
United States supra 1973. State N.C. v McCoy
An N.C. Supreme Court Case 19—. Therefore the
Conviction and sentence of 74CR2403 Was UN-
lawful and double jeopardy. Fed. sentence
based thereon is ~~illegal~~ (Do not write on this line)*

DISPOSITION:

Signature Staff Member

Date

TO: (Name and Title of Staff Member)	DATE:
FROM:	REGISTER NO.:
WORK ASSIGNMENT:	UNIT:

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

A defendant is placed in jeopardy once he is put to trial before a jury so that if the jury is discharged without his consent he cannot be tried again. This prevents a prosecutor or judge from subjecting a defendant to a second prosecution by discontinuing the trial when it appears that the jury might not convict. Head did not consent to the mistrial nor to the discharge of the chosen jury. Double jeopardy at retrial, Federal Sentence based thereon is illegal enhancements and upward departure.

(Do not write below this line)

DISPOSITION:

Signature Staff Member

Date

TO: (Name and Title of Staff Member)	DATE:
FROM:	REGISTER NO.:
WORK ASSIGNMENT:	UNIT:

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

Convictions was obtained by the use of false or perjured testimony or testimony not proven to be not false or perjured - Derriington 473 U.S. at 684 (United States v. Bagley 473 U.S. 667, 682 (1985) Bagley 473 U.S. at 679 n.9 (See Head's trial testimony and see Krippen's and Her statements to the police - perjury intent.

(Do not write below this line)

DISPOSITION:

Signature Staff Member

Date

FILED
ASHEVILLE, N. C.

JUL - 7 2005

U.S. DISTRICT COURT
W. DIST. OF N. C.

24-05

Judge Thornburg
The Federal Sentences of Head is illegal
and/or unconstitutional because Head
could not challenge the validity of the
prior convictions which was used
to enhance Head's federal sentences
and to obtain an upward departure
See, Title 21 U.S.C. 851(c) and the foot notes
thereof which relates the reasons for not
allowing challenges after cases 5 years old.
What cost more, record keeping or housing
of prisoners And Upkeep of the Prisoners?

There must be a time of limitation for
the Government's use of prior convictions
and prior charges, to increase the sentence
s of criminal defendants.

The Government must bare the burden
of proving the validity and legality etc
of the prior convictions and prior charges
relied on to increase sentences of
defendants in criminal prosecutions.

Failure to do the aforesaid makes
the Federal Sentences illegal and/or
Unconstitutional And Violative of the
Defendants Rights, Etc...

Signed, Joseph Marion Head Junior 17549-056
(OVER)

03-11-1964

12-11-68
TACCO
12-11-68

RECEIVED
ASHEVILLE, N.C.

JUN 27 2005

Clerk, U. S. Dist. Court
W. Dist. of N. C.

United States District Court
For The Western District of North Carolina
Asheville Division

U.S. DISTRICT COURT
W. DIST. OF N. C.

U.S. DISTRICT COURT
W. DIST. OF N. C.

Joseph Marion Head Junior

Reg. No. 17549056

Plaintiff

VS

State of North Carolina
And The Employees
Thereof - Liable Herein,
Defendants

Civil Case No. 05-120

Reference To
Criminal Case
74CR2403 and
74CR2403 A
Rutherford County
North Carolina

Complaint

In Forma Pauperis Or As Otherwise
Allowed And Ordered By The Court
For Timely Payments For Cost of Filing
Legal Assistance, Etc. And Copies of
Records, Etc, Cost of All Postage,
Books, Etc. Necessary Relating To
This Complaint And Access To The Courts.

Statement of The Complaint
And Jurisdiction of The Court
That this is a civil action authorized
by 28 U.S.C. 1331 and 1343(a-3, 2)
42 U.S.C. 1983, 1984, 1985(3), 1986,
U.S. Const. Amend. 1, 5, 8, 14 As Applies Hereto.

Complaint Page No. 2

Plaintiff

Plaintiff herein is, Joseph Marion Head Junior, Reg. No. 17548-056, who is a Federal Prisoner housed in the N-5 Cell 524 of Federal Medical Center Devens, located at 42 Patton Road, Post Office Box 879, Ayer - Massachusetts, Zip Code 01432. David L. Winn is the Warden of the aforesaid F. M. C. Devens. Plaintiff is in the custody of the aforesaid Warden and the United States Attorney General.

The background of Plaintiff and his criminal and civil cases is as related of prison and court records, State and Federal, unless the information therein is proven to be false or incorrect. As to same and the contents thereof the court is heretofore referred to same as if same was stated herein in proper order and form of same and as filed. See all processes relating to each of same and all related and asserted and demanded therein and relating thereto.

Defendants

Defendants herein is The State of North Carolina and The Employees thereof liable herein as adjudged liable by the Court and judge therefore.

Plaintiff herein is a laymen at law; none versed in law and has had no professional training in law and is being forced to proceed herein, pro se, in forma pauperis and without legal assistance of a person professionally trained in law. Therefore the court must or should grant and order hereto a Liberal Construction

That it is well settled that pro se litigants generally are entitled to a liberal construction of their pleadings, etc., which should be read to raise the strongest arguments they suggest. *Green v. United States* 260 F.3d, 78, 83 (2d. Cir. 2001) *Haines v. Kerner*, 404 U.S.C. 519, 520-21 (1972 - per curiam)

Plaintiffs rights to counsel is as related in the Constitutions and in

Complaint Page No. 4

18 U.S.C. 3006A and sub sec.s thereof.
And The rights to some type of
release where plaintiff can
work to earn funds to pay
cost of attorney fees of attorney
is of plaintiff's own choice.

That the United States Court of
Appeals For The Fourth Circuit,
prior hereto, in another case,
adjudged that, indigent prisoners
proceeding pro se in forma pauperis
are not required to prove
their assert claims and grounds
in advance of a full in court
evidentiary hearing. Plaintiff
states that he dose not waive
nor abandons this aforesaid right,
and dose demand such a hearing.

The Grounds Herein Are Plaintiffs
as asserted by Plaintiff Pro Se
who is a laymen at law etc
as stated herein. As to each of
same The Court must afford to
plaintiff a Liberal Construction
as aforesaid herein.

Grounds Asserted

Complaint Page No. 5

Ground No. 1

Defendants Herein by their judgments and orders of court records, denied and deprived plaintiff of his liberty violative of laws and constitutions and plaintiffs rights thereby and relating thereto.

See each opinion, judgement and order of each judge and justice relating to plaintiffs court cases and plaintiff and to the related and asserted and asked for and demanded within said records and records relating thereto.

The aforesaid and asserted as further applies to plaintiffs federal sentences and to plaintiffs commitment 18 U.S.C. 4245(c)

Further see all known prison and court records relating to the aforesaid and to plaintiff herein as if same was related herein or attached hereto as part hereof, in proper order of each of same as filed. See Docket Reports.

Complaint Page No. 6

See, North Carolina General Statutes
17-8, 17-10, 17-17 and 17-21

As may be applied to the afor
said herein

See each and all claims,
grounds, errors, motions, etc.
relating to each case of plaintiff,
prior and present, State and
Federal.

Relief Demanded
Pro Se By Plaintiff Herein
As Related Herein Below.
(1)

Leave to proceed in forma
pauperis based on the courts own
findings from the prison and
court records relating to Plaintiff
in the past 31 years in custody.
OR

Allow plaintiff to pay cost of
filing fees, etc. in small
payments each month as the
Court of Appeals for First Circuit
Did and Why They Did, Legal or
Not, Valid Or Not, & it was done.
See court records of that Court
and District Court in Boston - Ma.